

ESTTA Tracking number: **ESTTA410273**

Filing date: **05/22/2011**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Mr Christopher A McGrath		
Entity	Individual	Citizenship	UNITED KINGDOM
Address	22 St John Street McG Productions Ltd Newport Pagnell, BUCKS, MK16 8JH UNITED KINGDOM		

Correspondence information	Christopher McGrath Mr. McG productions Ltd 22 St John Street Newport Pagnell Milton Keynes, BUCKS, MK16 0EN UNITED KINGDOM legal@mcgproductionsltd.com Phone:+44(0)7815001450
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Applicant Information

Application No	85053714	Publication date	05/03/2011
Opposition Filing Date	05/22/2011	Opposition Period Ends	06/02/2011
Applicant	Nike, Inc. One Bowerman Drive, DF4 Beaverton, OR 97005 UNITED STATES		

Goods/Services Affected by Opposition

Class 018. All goods and services in the class are opposed, namely: Bags, namely, all-purpose sports bags, tote bags, duffle bags, messenger bags, backpacks, purses, umbrellas, luggage, cosmetic and toiletry cases sold empty
Class 025. All goods and services in the class are opposed, namely: Footwear; apparel, namely, pants, shorts, shirts, t-shirts, pullovers, sweat shirts, sweat pants, underwear, sports bras, dresses, skirts, sweaters, jackets, socks, sweatbands, gloves, belts, hosiery, armbands, coats, vests, headwear, namely, hats, caps; cleats for playing football, baseball, softball, golf, cricket
Class 028. All goods and services in the class are opposed, namely: Sports balls; bags for sporting equipment, namely, balls; bats, namely, baseball, softball, cricket; gloves used in baseball, softball, golf; golf clubs, golf balls, golf club grips, golf bags, golf tees, head covers for golf clubs, golf ball markers; protective padding for playing baseball, football, hockey, softball, cricket, basketball; hockey sticks, baseball mitts, softball mitts, personal exercise mats, snowboards, skateboards, stumps for playing cricket
Class 035. All goods and services in the class are opposed, namely: Retail store services in the field of apparel,

headwear, footwear, bags of all kinds, accessories made of leather and imitation leather, umbrellas, sports equipment, golf equipment, and accessories for all the aforesaid goods; advertising and marketing

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)
Other	<p>The opposer is opposing based on prior ownership of the following trademark: 20X11 The Honor of Sport# http://w\w\ipo.gov.uk/t-find-number?detailsrequested=C&trademark=2477961 Also based on: a) The U.S. Trademark Act (not limited to, but including a claim for injunctive relief as a result of dilution under section 43(c) [15 USC 1125(c)) b) Article 8 of the Paris Convention for the Protection of Industrial Property; and c) the following Case Law: FIRST NIAGARA INSURANCE BROKERS INC v. FIRST NIAGARA FINANCIAL GROUP INC: (http://caselaw.findlaw.com/us-federal-circuit/l115048.html) The United States is a Signatory to the Paris Convention for the Protection of industrial Property, Article 8 of which concerns: Trade Names - A trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a trademark. 20X1 is an intended trading name of Nike, Inc. that infringes upon the existing trading name 20X11 The Honor of Sport# Following First Niagara Ins. Brokers Inc. v. First Niagara Financial Group, Inc., (77 USPQ2d 1334 (TTAB 2005), rev'd, 476 F.3d 867 (Fed. Cir. 2007)), foreign and domestic trademark owners can oppose United States trademark applications on the basis of likelihood-of-confusion even if they do not own a trademark registration in the United States. A trademark owner need only show prior use of its trademark in the United States. It is not necessary that the trademark owner use its trademark in a type of commerce lawfully regulated by United States Congress, such as interstate commerce. Mere use in the United States is sufficient.</p>

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	20XII THE HONOR OF SPORT		
Goods/Services	Classes: 25,35 Class 25: Clothing, footwear, headgear. Class 35: Advertising; dissemination of advertising matter via all media, in particular in the form of thematic messages centred on human values; publicity through sponsoring; business management; business administration; office functions; the organisation, operation and supervision of loyalty and incentive schemes; advertising services		

	provided via the Internet; production of television and radio advertisements; promoting the goods and services of others by means of contractual agreements, in particular of sponsoring and licensing, enabling partners to gain additional notoriety and/or image and/or liking derived from those of cultural and sporting events, in particular international; promoting the goods and services of others by means of image transfer; rental of advertising space of all kinds and on all carriers, digital or not; administration of the participation of national teams to an international athletic competition, and promoting the support to said teams with the public and the concerned circles; accountancy; auctioneering; trade fairs; opinion polling; data processing; provision of business information.
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Attachments	20xii v nike.pdf (6 pages)(3764707 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Facsimile or email (by agreement only) on this date.

Signature	/CAMcGRATH/
Name	Christopher McGrath
Date	05/22/2011

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of trademark application Serial No. 85053714

For the mark: 20XI

Published in the Official Gazette on 3 May 2011

BETWEEN

CHRISTOPHER McGRATH
MANAGING OWNER/DIRECTOR OF McG PRODUCTIONS LIMITED

Opposer

- and -

NIKE, INC.

Claimant

NOTICE OF OPPOSITION

1. The opposer is a citizen of the United Kingdom and is Managing Owner/Director of McG Productions Ltd to which a worldwide trading licence has been granted by the opposer in the use of trade mark 20XII The Honor of Sport™. McG Productions Ltd is a Third Sector Social Enterprise, registered in the United Kingdom - Company No. 05311705:

(<http://wck2.companieshouse.gov.uk/7ba6552163a3b3acdf8b808c8968159e/compdetails>)

2. The above-identified opposer believes that he will be damaged in trade by registration of the mark shown in the above-identified application, and hereby opposes the same.

The grounds for opposition are as follows:

3. The opposer is opposing based on the following trademark:

20XII The Honor of Sport™

<http://www.ipo.gov.uk/t-find-number?detailsrequested=C&trademark=2477961>

4. The opposer claims wilful infringement of a known trademark and seeks indefinite injunctive relief, preventing Nike, Inc. from benefitting from the trademark in perpetuity. No other sports brand combined Arabic and Roman numerals in this way before 20XII. The distinctiveness of the trademark 20XII is clear, as evinced by Nike's attempts to copy it with only the slightest variation in 20XI.

5. The context of the claim is that, following a documented introduction to 20XII in an email exchange between Nike, Inc. and the opposer, via McG Productions Ltd, on 31 May 2010, Nike, Inc. began their trademark application on 6 June 2010, with scarcely one week separating the original introduction and subsequent application.

6. 20XII The Honor of Sport™ is a global mission to reinvigorate sports with the original, noble idea from Herodotus of ancient Greece who encouraged athletes to 'compete for honour, not for money', a philosophy that informs its sports and games profile for the next generation. The intention is that this brand will become synonymous with that ideal and show all athletes - and anyone else who believes in this ideal - in a truly honourable light. Profits aim to help support all poor communities across the world in sports and community programmes. It is vital that 20XII's exclusive association with sport prior to Nike's infringement be restored and maintained.

7. The opposer is basing his opposition on:

- a) The U.S. Trademark Act (not limited to, but including a claim for injunctive relief as a result of dilution under section 43(c) [[15 USC 1125\(c\)](#)];
- b) Article 8 of the Paris Convention for the Protection of Industrial Property; and
- c) the following Case Law: FIRST NIAGARA INSURANCE BROKERS INC v. FIRST NIAGARA FINANCIAL GROUP INC: (<http://caselaw.findlaw.com/us-federal-circuit/1115048.html>).

8. The United States is a Signatory to the Paris Convention for the Protection of Industrial Property, Article 8 of which concerns: Trade Names - A trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a trademark. 20XI is an

intended trading name of Nike, Inc. that infringes upon the existing trading name 20XII The Honor of Sport™.

9. Following *First Niagara Ins. Brokers Inc. v. First Niagara Financial Group, Inc.*, (77 USPQ2d 1334 (TTAB 2005), rev'd, 476 F.3d 867 (Fed. Cir. 2007)), foreign and domestic trademark owners can oppose United States trademark applications on the basis of likelihood-of-confusion even if they do not own a trademark registration in the United States. A trademark owner need only show prior use of its trademark in the United States. It is not necessary that the trademark owner use its trademark in a type of commerce lawfully regulated by United States Congress, such as interstate commerce. Mere use in the United States is sufficient.

10. www.youtube.com/user/20xii alone establishes prior use in the United States. The date of registration there is clearly visible: 25 November 2008. Other prior-use examples are available if required, including but not limited to registration with American firm GoDaddy.com of all domain name extensions (except .asia and .ca) of 20xii, including 20xii.us; with 20xii.com itself in use and registered in the United States through Arizona-based GoDaddy.com since 30 October 2007.

11. In addition, 20XII has, since 2008, been developing into a sports brand of increasing prominence and has been licensed by McG Productions Ltd to form a cryptic clue as part of an international treasure hunt, a global internet sports game called *Golden Key Quest* (at GoldenKeyQuest.com). Since 2008, following over a million hits to the sports game's pre-launch website, which reached over 70 countries worldwide (including the United States, with documented players from that country still visible online in attempting to unravel the cryptic sports clue 20XII, again establishing prior use in the United States), 20XII The Honor of Sport™ is gathering notable fame. The International Olympic Committee were themselves initially sceptical of its registration in the run up to the London 2012 Olympics, convinced it would benefit from any association, but they withdrew opposition upon learning of the aims of the mark. Its Facebook page now has a growing number of sporting luminaries readily associating themselves with 20XII: <http://en-gb.facebook.com/20XII>.

12. It should be noted that, given Nike's refusal to withdraw the application, despite repeated requests, and given their rapid marketing campaign that has seen the proliferation of 20XI across the internet with their franchisee agents promoting it, their attempt to make it a fait accompli in the market place before

their trademark application is complete demonstrates a wilful disregard for due process and international trade treaties and finds the opposer countering their campaign with the limited resources available to him, both in social media and through the courts.

13. Full details of the existing trademark, 20XII, are as follows:

Mark

Mark text:

20XII The Honor of Sport

Status

Status:

Registered

Classes:

25, 35

Relevant dates

Filing date:

24 January 2008

Next renewal date:

24 January 2018

Registration date:

12 September 2008

Publication in Trade Marks Journal

First advert:

Journal:

6738

Publication date:

06 June 2008

Registration:

Journal:

6755

Publication date:

03 October 2008

Assignment:

Journal:

6759

Publication date:

31 October 2008

List of goods or services**Class 25:**

Clothing, footwear, headgear.

Class 35:

Advertising; dissemination of advertising matter via all media, in particular in the form of thematic messages centred on human values; publicity through sponsoring; business management; business administration; office functions; the organisation, operation and supervision of loyalty and incentive schemes; advertising services provided via the Internet; production of television and radio advertisements; promoting the goods and services of others by means of contractual agreements, in particular of sponsoring and licensing, enabling partners to gain additional notoriety and/or image and/or liking derived from those of cultural and sporting events, in particular international; promoting the goods and services of others by means of image transfer; rental of advertising space of all kinds and on all carriers, digital or not; administration of the participation of national teams to an international athletic competition, and promoting the support to said teams with the public and the concerned circles; accountancy; auctioneering; trade fairs; opinion polling; data processing; provision of business information.

Names and addresses**Proprietor:**

Mr. Christopher McGrath
22 St. John Street, Newport Pagnell, Milton Keynes, MK16 8HJ

Residence country:

United Kingdom

Effective assignment date:

12 September 2008

ADP number:

0939765001

14. Unless constrained by this Honourable Court, Nike, Inc. will continue to infringe upon the trademark 20XII The Honor of Sport™, diluting its uniqueness in sports. In refusing the claimant's application and any subsequent applications that seek similarly to trade on and or dilute the trademark 20XII The Honor of Sport™, the Court will assist the opposer in working to restore and maintain the exclusivity of the mark in sports and seek additional relief for infringement, as is his right.

Opposition Signed by Christopher McGrath:



Date : 21 May 2011

STATEMENT OF TRUTH:

I believe that the facts stated in this application are true:

SIGNED BY: Mr. Christopher McGrath:



Christopher McGrath

Managing Director

McG Productions Ltd

22 St John Street

Newport Pagnell, Milton Keynes,

UNITED KINGDOM MK16 8HJ

Email: legal@mcgproductionsltd.com

DATE: 21 May 2011.